IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3261 OF 2004

Mukundalayam Co-op. Housing Society Ltd..PETITIONER

Versus

Ranganadhan Krishna Iyer
since deceased through his legal
heirs P.H. Muthambal & Ors.....RESPONDENTS

Mr. K.V. Tembe, for the petitioner.
Mr. M.R. Phal for Respondent Nos. 1 to 8
Mr. P.M> Palshikar, A.G.P. for Respondent No.9

CORAM: F.I. REBELLO J.
DATE :20th December, 2004

P.C.:

. The Respondent now represented by his legal heirs by way of a dispute claimed amounts from the petitioner society. It was the case of the disputant that as the society did not have funds they requested loan from members. The disputant had advanced loans to the petitioner. These amounts advanced were thereafter reflected in the account books of the society. The amounts are reflected in the balance sheet which were duly audited and approved at the annual general meeting. They have also been filed before the Assistant Registrar. This can be seen from the averments in para.9 of the claim filed before the Deputy Registrar.

2. The petitioners filed written statement and it was their contention that the dispute as raised by the original respondent was not maintainable as it was not a dispute falling within Section 91 of the Maharashtra Co-operative

Societies Act. In so far as the contention of the original respondent in the matter of audited balance sheet, it was sought to be contended that the original respondent has misappropriated money and that the accounts were now sought to be re-drawn up.

3. The original disputant led his evidence. No evidence was led on behalf of the petitioner society. The learned Deputy Registrar framed various issues. Issue No.1 was whether the Court had no jurisdiction to try and adjudicate the dispute. It answered the said issue in the affirmative and consequently did not answer the other issues. Aggrieved an Appeal came to be preferred by the legal heirs of the original respondent. On consideration of the dispute involved the Appellate Court held that this would be a dispute touching the business of the society being a dispute between a member and the society. Further it observed that it was pertinent to note that the loan was advanced by the member to the society and consequently the dispute would fall under Section 91 and consequently the Courts under the M.C.S. Act would have jurisdiction. It held that as the Appellate Court has all the powers of the trial Court and as the trial Court had failed to address the issue on merits, itself considered the material evidence on record, both oral and documentary and considering that the liability of the original respondent was reflected in the balance sheet and considering the interest which the original disputant was entitled to allowed the Appeal. It is this order which is the subject matter of the present

Petition.

3. At the hearing of this petition on behalf of the petitioner their learned Counsel contends that the Appellate Court was wrong in holding that the dispute is falling under Section 91 of the M.C.S. Act. Reliance is placed on the judgment in the case of **Deccan Merchants Co-operative Bank Ltd. v. M/s.Dalichand Jugraj Jain and Ors., AIR 1969 SC 1320,** and the judgment of a learned single Judge of this Court in **The Belganda Sahakari Karkhana Ltd. vs. Keshav Rajaram Patil, 1995 C.T.J.111.** It is contended on bealf of the petitioner that the respondent was acting for the developer and consequently it could not be said that such an advance would touch the business of the society and as such would not fall within Section 91 of the M.C.S. Act. It is further submitted that the balance sheet was not on record and consequently the learned Appellate Court could not have considered the said material.

4. Having heard the learned Counsel, in my opinion the petition is devoid of merit. Firstly, there is a clear finding of fact that the amounts advanced were amounts advanced to the society. The respondents claim for amounts before the society was registered was rejected on the ground that such dispute could not be entertained unless and until the society was registered and the original respondent was an allottee. Only amounts advanced after the society was registered were allowed. Once the amounts were advanced as

loan and it is reflected in the balance sheet to my mind the order of the Appellate Court cannot be said to be suffering from an error apparent on the face of the record.

5. It was however sought to be contended that the balance sheets were not produced. The original respondent in his claim statement had set out that these amounts were reflected in the balance sheet. The only contention raised on behalf of the petitioner herein was that those were amounts misappropriated by the respondent and they would get re-audit of the said balance sheet. In other words the claim was admitted, but disputed on the ground that the amounts were misappropriated. Neither before the Deputy Registrar nor before the Appellate Authority the re-audited balance sheets were placed for consideration. Considering that, the defence raised on behalf of the petitioners in my opinion cannot stand. Once the balance sheets were audited and were placed before the general body and the general body accepted the same, the amounts were liable to be paid unless and until a reaudit had been ordered and on the basis of the reaudit the amounts were rejected. This is not the case here. The judgment of the learned single Judge in The Belganda Sahakari Sakhar Karkhana Ltd. (supra) was only considering the issue as to when the jurisdiction would be ousted but even other wise held that a dispute between a member and society is maintainable. That judgment is, therefore, of no assistance. So also the judgment in Deccan Merchants Co-operative Bank Ltd. (supra) would be of no assistance to the petitioner's

case as admittedly the amounts allowed are when the respondent was a member. They pertain to loan advanced to the society. That clearly would fall within the expression "business" touching the society and in the light of that I find no merit in this petition, which is accordingly rejected. No order as to costs.

(F.I.REBELLO, J.)